

OFFICE LEASE

between

MICHAEL E. HORNSTEIN and ELLEN F. HORNSTEIN, AS TRUSTEES FOR THE  
MICHAEL and ELLEN HORNSTEIN 1998 REVOCABLE TRUST, and JORDAN D.  
HORNSTEIN, an individual and EMILY F. HORNSTEIN, an individual

as Landlord  
and

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation  
as Tenant

For the lease of

170 9th Street  
San Francisco, California

June 19, 2017

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**[Requires Updating before executing]**

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LIST OF ATTACHMENTS

- EXHIBIT A – Floor Plans
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – Schedule of Annual Base Rent Adjustments
- EXHIBIT D – Property Insurance
- EXHIBIT E - Exclusions from Operating Costs
- EXHIBIT F – Building Rules and Regulations
- EXHIBIT G – Form of Subordination, Nondisturbance and Attornment Agreement

## OFFICE LEASE

THIS OFFICE LEASE (this "**Lease**"), dated for reference purposes only as of June 19, 2017, is by and between Michael E. Hornstein and Ellen F. Hornstein, as trustees for the Michael and Ellen Hornstein 1998 Revocable Trust (as to a 68% ownership of the Property), Jordan D. Hornstein, an individual owner (as to a 16% ownership of the Property), held as his sole and separate property, and Emily F. Hornstein (aka Emily Levi), an individual owner (as to a 16% ownership of the Property) held as her sole and separate property (collectively "**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Tenant**").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "**Basic Lease Information**"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	June 19, 2017
Landlord:	Michael E. Hornstein and Ellen F. Hornstein, as trustees for the Michael and Ellen Hornstein 1998 Revocable Trust (68%), and Jordan D. Hornstein (16%) as an individual owner held as his sole and separate property and Emily F. Hornstein (16%) as an individual owner held as her sole and separate property.
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building ( <u>Section 2.1</u> ):	The three story building commonly known and numbered 170 9th Street, San Francisco, California (Assessor Block 3509, Lot 8)
Premises ( <u>Section 2.1</u> ):	The entire building, comprising all usable space in the Building (floor plans attached as <u>Exhibit A</u> .)
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 25,125 rentable square feet.
Term (Section 3):	Approximately twelve (12) years, commencing on the Commencement Date (as defined in Article 3), and ending March 31, 2030 (the " <b>Expiration Date</b> ") (the " <b>Initial Term</b> "), subject to the Extension Options set forth in <u>Section 3.5</u> .
Extension Options ( <u>Section 3.5</u> ):	Estimated Commencement Date: April 1, 2018 City shall have two (2) options to extend the Term for additional periods of five (5) years

each (each, an “**Extended Term**”), exercisable by City by notice to Landlord given not less than nine (9) months in advance, on the terms and conditions set forth in Section 3.4.

Initial Base Rent (Section 4.1):

Annual Base Rent: \$1,256,250.00 (\$50.00 per square foot)

Monthly Base Rent: \$104,687.50 (\$4.17 per square foot)

Base Rent Adjustment:

Base Rent shall be adjusted annually according to the Schedule attached as Exhibit C

Base Rent for the Extended Terms (Section 4.2):

Base Rent for each Extended Term shall be ninety-five percent (95%) of the then fair market rent, as provided in Section 4.2.

Additional Charges (Section 4.3):

In addition to Base Rent, City shall reimburse Landlord for Real Estate Taxes as provided in Section 4.5, Insurance Costs, as provided in Section 4.6 and Operating Costs, as provided in Section 4.7.

Use (Section 5.1):

General office and public program use by City, including the Department of Homelessness and Supportive Housing and its service providers as limited by Section 5.1.

Utilities (Section 9.2):

City shall pay for natural gas, electricity, janitorial, security, water, pest control and sewer charges and for trash removal for the Premises, as further described in Section 9.2.

Key Contact and Notice Address of Landlord (Section 23.1):

2628 Filbert Street,  
San Francisco, CA 94123  
Attention: Michael Hornstein  
Tel: (415) 397-4494  
Fax: (415) 982-1634  
Email: [hornsteinrealestate@gmail.com](mailto:hornsteinrealestate@gmail.com)

Notice Address for Tenant (Section 23.1):

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: John Updike,  
Director of Property  
Fax No.: (415) 552-9216

with a copy to:

Department of Homelessness and  
Supportive Housing

1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Chief Financial Officer  
Fax No.: (415) \_\_\_\_\_

and a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4682  
Attn: Real Estate and Finance Team  
Fax No.: (415) 554-4757

Key Contact for Tenant:

Jeff Kositsky  
Director of Department of Homelessness and  
Supportive Housing  
(415 ) \_\_\_\_\_

Brokers (Section 23.8):

Colliers

Parking Rights:

None.

Other Noteworthy Provisions (Section 22):

First Offer to Purchase (Section 22.1)

## 2. PREMISES

### 2.1 Lease; Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the entire Building including the roof and those premises shown on the floor plan(s) attached hereto as Exhibit A (the "**Premises**"), located in the building identified in the Basic Lease Information (the "**Building**"). The Premises contain the rentable area and are located on the floor(s) of the Building specified in the Basic Lease Information. The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "**Property**." In no event shall City have the right to use the roof of the Building for anything other than communications equipment antennae and/or dishes and City shall provide Landlord with at least 24 hours advance written notice (facsimile is acceptable) with respect to any request to access the roof and Landlord shall have the right to have a representative present during any such access.

### 2.2 Common Areas

As the sole tenant of the Building, City has the exclusive right to use and occupy the Building, including the lobbies, corridors, elevators, stairways and other public areas of the Building and the Property (collectively, the "Common Areas"), subject to Landlord's rights under Section 18.

### 2.3 Disability Access

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CAsp") to determine whether the property meets all applicable construction-related accessibility

requirements. City is hereby advised that the Premises have not been inspected by a CASp. Pursuant to California Civil Code Section 1938 Landlord hereby informs Tenant of the following:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

### **3. TERM**

#### **3.1 Term of Lease**

The Premises are leased for an initial term (the "**Initial Term**") commencing on the first to occur of (i) the date Landlord tenders possession of the Premises to City under this Lease with the Leasehold Improvements (as defined below) having been Substantially Completed and accepted by City pursuant to Section 6.1, or (ii) April 1 2018, provided Landlord has become an approved vendor of City and successfully enrolled in City's ACH (electronic payment program), and ending on the Expiration Date specified in the Basic Lease Information or such earlier date as this Lease may be terminated pursuant to the provisions of this Lease; provided, however, that City shall have the right to extend the Initial Term pursuant to Section 3.4 (Extension Option(s), below). The word "**Term**" as used herein shall refer to the Initial Term and any Extended Term if City exercises any of the Extension Option(s) as provided below.

#### **3.2 Commencement Date and Expiration Date**

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "**Commencement Date**" and the "**Expiration Date**." If the Commencement Date occurs on a date other than April 1, 2018, then promptly thereafter Landlord shall deliver to City a notice substantially in the form of Exhibit B attached hereto, confirming the actual Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

#### **3.3 Delay in Delivery of Possession**

Landlord shall use commercially reasonable to deliver possession of the Premises with all of the Leasehold Improvements to deliver possession of the Premises with all of the Leasehold Improvements having been Substantially Completed and accepted by City's Director of Property pursuant to Section 6.1 on or before April 1, 2018 (the "**Target Delivery Date**"). Subject to City changes in the Working Drawings due to pricing, Force Majeure, City requested Change Orders, or other City-related delays, if Landlord is unable to deliver possession of the Premises to City with the Leasehold Improvements being Substantially Completed within three hundred (300) days after the Target Delivery Date, then City may terminate this Lease, without any further liability under this Lease, upon written notice to Landlord.



### 3.4 Extension Option(s)

City shall have the right to extend the Initial Term of this Lease (each, an "**Extension Option**") for two (2) additional periods of five (5) years each (each, an "**Extended Term**"). Such Extension Options shall be on all of the terms and conditions contained in this Lease, provided that Base Rent shall be adjusted as provided in Section 4.2. City may exercise each Extension Option, if at all, by giving written notice to Landlord no less than nine (9) months prior to the then scheduled expiration of the Term; provided, however, if City is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its intent to exercise an Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within sixty (90) days after the date of the determination of the new Base Rent pursuant to Section 4.2 (Determination of Base Rent for the Extended Term). In order for City to have the right to exercise the second Extension Option, City must have exercised the first Extension Option and the second Extension Option must be exercised timely within the first Extended Term. In the event that the Board of Supervisors and/or the Mayor does not approve an Extension Option Exercise, the City shall, in any event, pay the Landlord for Base Rent and Additional Charges for nine (9) complete months following such disapproval, provided, however, the occupancy of City in the Premises shall not be extended by such payments beyond the end of the applicable Term.

## 4. RENT

### 4.1 Base Rent

Beginning on the Commencement Date, City shall pay to Landlord the Base Rent specified in the Basic Lease Information (the "**Base Rent**"). Such Base Rent shall be adjusted during the Initial Term as set forth in attached Exhibit C for the respective periods set forth in such Exhibit. The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month. In no event shall City be required to pay rent until Landlord has become an Approved City Vendor and successful enrolled in City's electronic payment program.

### 4.2 Determination of Base Rent for the Extended Term

Upon the commencement of the Extended Term, the Base Rent shall be adjusted to equal ninety-five percent (95%) of the prevailing market rental rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within the South of Market (SOMA) area of San Francisco ("**Reference Area**"). As used herein, the term "**prevailing market rate**" shall mean the base rental for such comparable space, taking into account (i) any additional rental and all other expenses and payments and escalations payable hereunder, (ii) size of the premises covered by leases of such comparable space, (iii) the duration of the renewal term and the term of such comparable leases, (iv) free rent given under such comparable leases and any other tenant concessions, (v) building standard tenant improvement allowances and other allowances given under such comparable leases (vi) creditworthiness of the tenant and (vii) windowline, curb appeal and other aesthetics which would affect the desirability of such comparable leases.

Within thirty (30) days following City's exercise of each Extension Option, Landlord shall notify City of Landlord's determination of the prevailing market rate for the Premises. If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord within fourteen (14) days following Landlord's notice to City of the prevailing market rate and such dispute shall be resolved as follows:

(a) Within thirty (30) days following Landlord's notice to City of the prevailing market rate, Landlord and City shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

(b) If within this thirty (30)-day period Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and City within thirty (30) days of the expiration of the thirty (30) day consultation period described in (a) above.

(c) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the prevailing market rate and submit such determination to Landlord and City. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the prevailing market rate.

(d) If Base Rent for the Extended Term is not determined before the commencement of the Extended Term, City shall continue to pay Base Rent at the rate in effect immediately prior to the Extended Term. Thereafter, City shall pay any deficit or Landlord shall refund any excess payment, as the case may be, within thirty (30) days after the parties determine Base Rent.

(e) All appraisers specified herein shall be "MAI" designated members of the Appraisal Institute with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the Reference Area. Landlord and City shall each pay the cost of the appraiser selected by such party and, if applicable, one-half of the cost of the third appraiser, plus one-half of any other costs incurred in the arbitration.

#### **4.3 Additional Charges/Net Lease**

In addition to Base Rent, City shall pay as additional rent any other charges or amounts City is expressly required to pay to Landlord under this Lease ("Additional Charges"), including, without limitation, Real Estate Taxes, Insurance Costs and Operating Costs. Such Additional Charges shall be paid to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent." This is intended to be a "net" Lease and Tenant shall pay all costs and charges relating to the Premises and the Property not expressly imposed on Landlord under this Lease.

#### **4.4 Definitions**

For purposes hereof, the following terms shall have the meanings hereinafter set forth:

"Expense Year" means each calendar year commencing January 1st of each year during the Term, including any partial year in which this Lease commences; provided that Landlord, upon advance written notice to City, may change the Expense Year to any other twelve (12) consecutive month period and, in the event of any such change, City's payment of Real Estate Taxes, Property Insurance, and Operating Costs shall be equitably adjusted for the Expense Years involved in any such change.

#### **4.5 Real Estate Taxes**

##### **(a) City's Payment of Property Taxes**

During the Term, City shall pay to Landlord each month one-twelfth (1/12) of the annual Real Estate Taxes as defined in **Section 4.5(b)**, for each Tax Year, as defined in **Section 4.5(c)**, as Additional Charges. If the Commencement Date occurs on a day other than the first day of a calendar month or the Lease expires or terminates on a day other than the last day of a calendar month, then the monthly payment of City's payment of the annual Real Estate Taxes for such fractional month shall be prorated based on a thirty (30)-day month. Within thirty (30) days after Landlord receives the tax bills for any Tax Year, Landlord shall furnish City with a copy of the tax bills accompanied by a statement ("**Landlord's Tax Statement**") setting forth the annual tax payment required. If City's total actual payment of the estimated Real Estate Taxes is less than the estimated Real Estate Taxes paid by City for such tax year, City shall pay the difference to Landlord within thirty (30) days after the receipt of Landlord's Tax Statement and the tax bill (whether or not this Lease has terminated). If the total amount of estimated Real Estate Taxes paid by City for such tax year exceeds City's actual annual Real Estate Taxes for such Tax Year, such excess shall be credited against the next installments of Real Estate Taxes due from City or, at City's option, such excess shall be refunded to City within thirty (30) days after City requests the refund.

##### **(b) Definition of "Real Estate Taxes"**

"**Real Estate Taxes**" means all taxes, assessments and charges levied upon or with respect to the Property, Building or Landlord's interest in the Building and the Property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the State of California or any political subdivision thereof, district, or any other public entity having the direct or indirect power to tax and where the funds are generated with reference to the Building and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Property and Building are located, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, gross receipts, or capital stock taxes or income taxes of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to timely pay its Real Estate Taxes under the terms of this Lease, (3) any personal property taxes payable by City hereunder or (4) any increase in Real Estate Taxes due to any reassessment upon a transfer(s) of any of Landlord's interest in the Building or Property after the Commencement Date shall be limited as follows: (i) for the first three (3) years from the Commencement Date no increase due to any reassessment(s) upon any transfer(s) of the Building and Property after the

Commencement Date shall be billed to City; (ii) for the fourth year from the Commencement Date, only one-third (1/3) of any increase(s) for any reassessment(s) due to transfer(s) of the Building and Property after the Commencement Date shall be charged to City; (iii) for the fifth year from the Commencement Date, only two-thirds (2/3) of any increase(s) for any reassessment(s) due to transfer(s) of the Building and Property after the Commencement Date shall be charged to City; and (iv) for the sixth year from the Commencement Date and the remainder of the Term, the full amount of any reassessment(s) due to transfer(s) of the Building and Property after the Commencement Date shall be charged to City.

(c) **“Tax Year” Defined**

**“Tax Year”** means each calendar year during the Term, including any partial year during which this Lease may commence; provided that Landlord, upon notice to City, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, City’s payment of the Annual Taxes shall be equitably adjusted for the Tax Year involved in any such change.

**4.6 Property Insurance Costs**

During the Term, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of the amount of Landlord's Insurance Costs at a minimum as required by Section 17 and such additional liability insurance limits as determined by Landlord or Landlord’s lender (Insurance). City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. Landlord's Expense Statement delivered pursuant to Section 4.7(b) shall include in reasonable detail Landlord's Insurance Costs for such Expense Year. If Landlord's actual Insurance Costs for such Expense Year exceeds City’s estimated payment of Landlord's Insurance Costs paid by City for such Expense Year, City shall pay to Landlord (whether or not this Lease has terminated) the difference between the amount of Landlord's Insurance Costs paid by City for such Expense Year and City’s payment of the actual Landlord's Insurance Costs for such Expense Year within thirty (30) days following Landlord’s delivery of Landlord’s Expense Statement. If the total amount of estimated Landlord's Insurance Costs paid by City for such Expense Year exceeds City’s payment of the actual Landlord's Insurance Costs for such Expense Year, such excess shall be credited against the next installments of Landlord's Insurance Costs due from City hereunder, or if this Lease has terminated, such excess shall be refunded to City within thirty (30) days following Landlord’s delivery of Landlord’s Expense Statement. Notwithstanding the foregoing, any failure or delay in the delivery of Landlord’s Expense Statement shall not operate as a waiver of Landlord’s right to collect City’s payment of the increase in Landlord's Insurance Costs owing to Landlord.

**4.7 Operating Costs**

(a) **"Operating Costs"** means the total reasonable and prudent costs and expenses actually paid or incurred by Landlord (and not paid directly by City) in connection with the management, operation, maintenance, repair and, as limited herein, replacement, of the Building, including, but not limited to: (1) the cost of air conditioning, electricity, steam, water, heating, mechanical, telephone, ventilating, and elevator systems and all other utilities, (2) the cost of repairs and all labor and material costs related thereto, and the cost of general maintenance, cleaning and service contracts and the cost of all supplies, tools and equipment required in connection therewith, (3) third party labor costs engaged in the operation, repair, or maintenance of the Building, allocated in proportion to the percentage of such person’s working time actually spent working in connection with the Building, (4) reasonable management fees not to exceed four percent (4%) of the Base Rent, (5) fees, charges and other costs of all independent contractors engaged by Landlord, allocated in proportion to the percentage of such person’s working time actually spent working in connection with the Building, (6) the cost of capital

improvements made to the Building after completion of its construction as a labor-saving or energy saving device or to effect other economies in the operation or maintenance of the Building and which benefit the Premises, re-painting of the exterior of the Building, roof replacement and roof capital repairs for the Building, or made to the Building after the date of this Lease that are required under any governmental law or regulation that was not applicable (or triggered to be applicable) to the Building at the time that permits for the construction of the Leasehold Improvements (Section 6) thereof were obtained, unless caused by Landlord's deliberate or negligent violation of such law, rule or regulation (the items in this Section 4.7(a)(6) referred to as "Allowed Capital Costs"), (7) janitorial costs if requested by City for Landlord to provide, (8) deductibles under insurance policies not to exceed Ten Thousand Dollars (\$10,000) per occurrence, and (9) other expenses reasonably incurred in connection with the management, operation, maintenance or repair of the Building (other than Real Estate Taxes, Property Insurance Costs and any services for which Landlord is separately and directly reimbursed by City) which would, under generally accepted accounting principles, be considered an operating expense. The computation of Operating Costs shall be made in accordance with generally accepted accounting principles. With respect to the Allowed Capital Costs, such costs shall be amortized over the useful life thereof, together with interest on the unamortized balance at a rate per annum equal to three (3) percentage points over the Treasury Rate charged at the time such item is constructed, but not more than the maximum rate permitted by law at the time such item is constructed.

Notwithstanding the foregoing, "Operating Costs" shall exclude the items described on the attached Exhibit E.

**(b)** During the Term, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of the Operating Costs. City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City. The Operating Costs for the initial year of the Lease are estimated and attached as Exhibit \_\_\_\_\_. Landlord may revise such estimates of Operating Costs from time to time and City shall thereafter make payments on the basis of such revised estimates, provided that no such revision shall be retroactive, and Landlord may not make any such revisions more than twice in any given Expense Year and no such revision may be made any earlier than four (4) months subsequent to the prior estimate for such Expense Year. With reasonable promptness not to exceed ninety (90) days after the expiration of each Expense Year, Landlord shall made a good faith effort to furnish City with a statement (herein called "Landlord's Expense Statement"), prepared by an independent certified public accountant, setting forth in reasonable detail the Operating Costs for such Expense Year and City's payments thereof, but in not event shall Landlord's Expense Statement be sent later than one hundred twenty (120) days after the expiration of each Expense Year. If the actual Operating Costs for such Expense Year exceeds the estimated Operating Costs paid by City for such Expense Year, City shall pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Operating Costs paid by City and the actual Operating Costs within thirty (30) days after the receipt of Landlord's Expense Statement. If the total amount paid by City for any such payment of Operating Costs exceeds City's Operating Costs Share of the actual Operating Costs for such Expense Year, such excess shall be credited against the next installments of Operating Costs due from City to Landlord hereunder, or refunded to City, at City's option.

#### **4.8 Delivery of Landlord Estimated Expense Statements**

For City's budgeting purposes, Landlord shall use best efforts to deliver estimated payment statements for Real Estate Taxes, Insurance Costs and Operating Costs in reasonable detail prior to December 31 of the prior Expense Year

#### **4.9 Proration**

If the Commencement Date or Expiration Date shall occur on a date other than the first or last day of a Tax Year or Expense Year, City's payment of Real Estate Taxes, Insurance Costs or Operating Costs for the Expense Year in which the Commencement Date or Expiration Date occurs, shall be prorated based on a three hundred sixty-five (365)-day year.

#### **4.10 Audits**

City shall have the right, upon not less than five (5) business days' notice to Landlord, to audit the books and records of the Building related to Operating Costs, Insurance Costs and Real Estate Taxes. If such audit discloses any discrepancies which would result in a reduction of City's payment of Operating Costs, Insurance Costs and Real Estate Taxes for any Expense Year, Landlord shall within thirty (30) days refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit discloses any discrepancies which result in a reduction of City's payment of the total Operating Costs, Insurance Costs, and Real Estate Taxes of three percent (3%) or more for any Expense Year, then Landlord shall pay the costs of such audit.

#### **4.11 Records**

Landlord shall maintain at offices to be periodically designated by Landlord in San Francisco in a safe, complete and organized manner all of its records pertaining to this Lease and Real Estate Taxes, Insurance Costs, and Operating Costs and any other charges paid by City pursuant hereto, for a period of not less than five (5) years following expiration of each applicable Lease Year, including not less than five (5) years after the end of the Term. Landlord shall maintain such records on a current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.10 above.

### **5. USE**

#### **5.1 Permitted Use**

City may use the Premises for general office and public program uses and such other uses as may be specified in the Basic Lease Information, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. City shall not use, occupy, or permit the use or occupancy of the Premises for any purpose which is illegal or dangerous or for any purposes where the Premises is accessible to the public relating to social services of any kind, including, without limitation, medical or counseling services, drug or alcohol or other dependency rehabilitation services, housing, job training, policing activities or cannabis-related.

#### **5.2 Observance of Rules and Regulations**

City shall observe Landlord's reasonable rules and regulations for the Building subject to the provisions of this Lease. City acknowledges and agrees to the current Building rules and regulations attached hereto as Exhibit F (the "**Rules and Regulations**"). Landlord may make

reasonable additions or modifications thereto, which shall be binding upon City within a reasonable implementation period following Landlord's delivery to City of a copy thereof, provided that such additions or modifications shall not reduce Landlord's obligations hereunder, increase City's rental obligations, interfere with City's business in the Premises, conflict with the provisions of this Lease, materially increase the burdens or obligations upon City, impose a charge upon City for services which this Lease expressly states are to be provided to City at no charge, or materially adversely affect the conduct of any business in the Premises which City is permitted to conduct pursuant to Section 5.1 hereof.

### **5.3 Interference with Access**

Landlord shall provide to City access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, together with uninterrupted access thereto to the maximum extent possible, including, without limitation, during any power outages affecting the Premises or any portion of the Building; provided, however, that Landlord may, after consultation with the City's Administrator, interrupt City's access to the Premises in the event of an immediate threat of the Premises or any other portion of the Building being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises, or any other portion of the Building being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for five (5) business days and materially impairs City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such interruption of access to the Premises interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and materially impairs City's ability to carry on its business in the Premises, then City shall have the right, as its sole legal and equitable remedy under this Lease, to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within ninety (90) days of the date City's use was interrupted due to Landlord's failure to comply with its obligations under this Lease or the negligence or willful misconduct of Landlord or its Agents, and such use is actually restored within such 90-day period. Nothing in this Section shall limit the rights of the parties with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

## **6. LEASEHOLD IMPROVEMENTS**

### **6.1 Landlord's Obligation to Construct Improvements**

Landlord, through CCI Commercial Construction & Improvements, Inc. retained by Landlord as the general contractor (the "General Contractor"), shall perform the work and make the installations in the Premises pursuant to the Construction Plans (as defined in this Section below) approved by City, and in accordance with the provisions of this Section below. Such work and installations are referred to as the "Leasehold Improvement Work" and "Leasehold Improvements." All costs incurred by Landlord in connection with the Leasehold Improvements in excess of the Allowance and in accordance with this Section 6 shall be reimbursed by City.

#### **(a) Plans and Specifications**

Before the Lease reference date, Landlord has caused TEF Architecture and Interior Design, Inc. ("Architect") to prepare and submit to City for its approval a space plan for the Leasehold Improvements based on City's program requirements for use of the Premises. City hereby approves the space plan dated \_\_\_\_\_, 2017 (the "Approved Space Plan") attached hereto as Exhibit F.

Immediately following the Effective Date of this Lease (as defined in Section 23.30 hereof), based on the Approved Space Plan and any adjustments authorized by City, Landlord shall cause the Architect and a Leadership in Energy and Environmental Design (“LEED”) consultant (if required to meet City’s obligations to cause the Leasehold Improvements to comply with the requirements of Sections 700 through 713 of the San Francisco Environment Code), to prepare final plans, specifications and working drawings in form and detail sufficient for purposes of contractor pricing (the “Pricing Plans”). City shall have ten (10) business days to review and either approve of the Pricing Plans (which approval shall not be unreasonably withheld) or provide Landlord with City’s adjustments to the Pricing Plans. If the City fails to approve or disapprove the Pricing Plans within such ten-day period the Pricing Plans shall be deemed approved by the City.

Immediately following City’s approval (or deemed approval) of the Pricing Plans, based on the approved Pricing Plans and any adjustments authorized by City, Landlord shall cause final plans, specifications and working drawings for the Leasehold Improvements to be prepared, in conformity with the requirements hereof. Landlord shall use commercially reasonable efforts to submit a copy of such final plans, specifications and working drawings in sufficient detail to define the work (the “Construction Drawings”) to City within sixty (60) days after the City’s approval of such Pricing Plans. The Construction Drawings shall be subject to City’s approval, which approval shall not be unreasonably withheld. City shall have ten (10) business days to review and either approve of the Construction Drawings or provide Landlord with the revisions that City reasonably requires in order to obtain City’s approval. If the City fails to approve or disapprove the Construction Drawings within such ten-day period, the Construction Drawings shall be deemed approved. As soon as reasonably possible and no later than ten (10) business days thereafter, Landlord shall submit to City revised Construction Drawings that incorporate the revisions required by City. City shall have five (5) business days to review and approve the revisions to the Construction Drawings (which approval shall not be unreasonably withheld). If the City fails to approve or disapprove the revisions to the Construction Drawings within such five-day period, the revisions to the Construction Drawings shall be deemed approved. The final Construction Drawings approved by City shall be referred to as the “Construction Documents.”

**(b) Mayor’s Office of Disability Review; Permits**

In the event the Leasehold Improvement Work requires construction permits, Landlord acknowledges that City requires that the Construction Documents be reviewed by the San Francisco Mayor’s Office of Disability (“MOD”) for compliance with the Americans With Disabilities Act of 1990 (“ADA”) and other related laws before Landlord submits them to the San Francisco Department of Building Inspection (“DBI”) for construction permits. Landlord shall cause the Architect to submit the Construction Documents to MOD for review promptly following City’s approval of the final Construction Drawings. If MOD requires revisions to the Construction Documents or modifications or additional improvements to the Property, Landlord shall cause Architect to revise the Construction Documents and/or design and prepare all additional plans and specifications as required by such MOD review, in conformity with ADA and other legal requirements. Such revised Construction Documents and additional plans shall thereafter be referred to as the “Construction Plans.” Upon MOD’s approval of the Construction Plans, Landlord shall cause Architect to notify Landlord and City that the Construction Plans have been approved and to identify the additional work, if any, specified therein as a result of the MOD review.

Landlord shall secure any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Leasehold Improvement Work. Promptly following MOD’s approval of the Construction Plans and City’s approval of the Construction Budget, as defined in the following subsection, Landlord shall apply for any permits, approvals or licenses necessary to complete the



construction shown on the Construction Plans and shall provide copies to City promptly following receipt thereof. Landlord shall be responsible for arranging for all inspections required by DBI. Payments for such permits and approvals shall be paid as costs of the Leasehold Improvements.

**(c) City's Approval of Costs**

City has approved a good faith initial construction budget ("ROM") which includes all project hard and soft costs. A copy of the ROM is attached hereto as Exhibit K.

Upon completion of the Pricing Plans, General Contractor shall update the ROM based on such additional information. City shall have the right to request (3) competitive bids from subcontractors in each trade in connection with all work performed by Landlord or General Contractor hereunder. If necessary, the Construction Plans shall be revised and completed such that the cost of the Leasehold Improvement Work does not exceed the ROM.

Prior to commencing construction of the Leasehold Improvement Work, Landlord shall prepare and submit to City, based on the Construction Plans, a good faith budget for the Leasehold Improvement Work, showing all costs to be paid by City, including a contractor contingency of three percent (3%) (the "Construction Budget") or such other contingency reasonably approved by City. Provided the Construction Budget does not exceed the ROM, City shall have five (5) business days to review and approve or disapprove the Construction Budget. If City fails to approve or disapprove the Construction Budget that does not exceed the ROM within such five-day period, the Construction Budget shall be deemed approved.

If such Construction Budget exceeds the ROM, Architect, General Contractor, and City shall at City's option diligently pursue reductions in scope so that the Construction Budget can be equal to or less than the ROM.

If during the course of construction, the Leasehold Improvements cannot be completed in conformity with the most recently City approved Construction Budget, Landlord shall immediately submit to City for its approval a revised Construction Budget and shall identify to City changes in line items and the reasons for the changes. City acknowledges that renovation or improvement of existing facilities inherently involves risk of unanticipated costs necessary to obtain a Final Certificate of Occupancy. If further changes are required, Landlord shall seek City's approval, following the same procedures. If costs exceed the approved Construction Budget, the parties agree to meet and confer in good faith to either (i) obtain City approval of any increased costs, with an appropriation for such amount or (ii) revise the Leasehold Improvement Work so that it does not exceed the approved Construction Budget. City shall have the right to reasonably approve or disapprove any Construction Budget or revised Construction Budgets in its reasonable judgment. No such approval or disapproval shall be unreasonably delayed, but any such revised Construction Budget shall be deemed approved if City does not approve or disapprove the revised Construction Budget within ten (10) business days after request for such approval. The most recent City approved Construction Budget shall supersede all previous City approved Construction Budgets.

**(d) Construction**

Immediately upon City's approval of the Construction Plans and the Construction Budget and Landlord's procurement of all necessary permits and approvals for the Leasehold Improvements, Landlord shall cause the General Contractor to commence, the construction of the Leasehold Improvements. Landlord shall require in any contract issued in connection with the Leasehold Improvement Work that General Contractor (i) shall cause the Leasehold Improvement Work to be completed in a good and professional manner in accordance with sound building practice, (ii) shall comply with and give notices required by all laws, rules,

regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the Leasehold Improvements (iii) shall comply strictly with all applicable disabled access laws, including, without limitation, the most stringent requirements of the ADA, Title 24 of the California Code of Regulations (or its successor) and (iv) shall pay prevailing wages as further provided in Section 23.24 (Prevailing Wages), below, and shall not use tropical hardwood wood products, or virgin redwood wood products as further provided in Section 23.26 (Tropical Hardwood and Virgin Redwood Ban), below. Landlord shall use commercially reasonable efforts to enforce such requirements.

**(e) Construction Schedule; Substantial Completion**

Landlord shall keep City apprised on a regular basis of the status of plan preparation, permit issuance and the progress of construction. City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Leasehold Improvement Work. When construction progress so permits, but not less than fifteen (15) days in advance of Substantial Completion, Landlord shall notify City of the approximate date on which the Leasehold Improvement Work will be Substantially Completed in accordance with the Construction Plans. Landlord shall revise such notice of the approximate Substantial Completion date as appropriate from time to time and shall immediately notify City when the Leasehold Improvement Work is in fact Substantially Completed. On the Substantial Completion Date or other mutually agreeable date as soon as practicable thereafter, City and its authorized representatives shall have the right to accompany Landlord or Architect on an inspection of the Leasehold Improvement Work.

“Substantial Completion” or "Substantially Completed" shall be when the Leasehold Improvements are sufficiently completed in accordance with the approved Construction Documents and Construction Plans except for finishing details, decorative items, minor omissions, mechanical adjustments, and similar items of the type customarily found on an architectural punch-list, the correction or completion of which items collectively will not substantially interfere with Tenant’s occupancy and use of the Premises (such items generally, “Punch-List Items”) and Architect has provided an AIA G704 certificate of substantial completion with respect to the Leasehold Improvements. Landlord and Tenant shall cooperate to facilitate completion of any Punch-List Items as quickly as possible.

No approval by City or any of its Agents of the Space Plans, Pricing Plans, Construction Drawings, Construction Documents, Construction Plans, or completion of the Leasehold Improvement Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein shall limit Landlord’s obligations to obtain all such approvals.

**(f) Appointment of Representatives**

City and Landlord shall each designate and maintain at all times during the design and construction period a project representative (“Representative”), and an alternate for such Representative (“Alternate”), each of whom shall be authorized to confer and attend meetings and represent such party on any matter relating to the Leasehold Improvement Work. Landlord and City shall not make any inquiries of or requests to, and shall not give any instructions or authorizations to, any other employee or agent of the other party. The initial Representatives and Alternates shall be:

City:	Representative -- _____ Alternate -- _____
Landlord:	Representative -- _____ Alternate -- _____

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party. Each party's Representative or Alternate shall be available during ordinary business hours so that questions and problems may be quickly resolved and so that the Leasehold Improvements may be completed economically and in accordance with the Construction Schedule. All approvals made by City's Representative or Alternate shall be made in writing.

**(g) Changes to Construction Plans**

If City inquires in writing about any change, addition or alteration relating to the design or specifications of the Leasehold Improvement Work (a "Change Order"), Landlord shall cause its Architect and General Contractor to promptly supply a good faith not to exceed change order cost estimate. In the event that a Change Order would delay Substantial Completion, Landlord shall also provide its good faith estimate of such a delay. Within five (5) business days of receipt of such cost and delay estimates, City shall notify Landlord in writing whether City approves the proposed Change Order and an increase in the Construction Budget (if required). If City timely approves the proposed Change Order, then General Contractor shall proceed with such Change Order as soon as reasonably practical thereafter.

**(h) Excluded Costs**

Code and Accessibility Improvements. Landlord shall through General Contractor furnish and install all improvements that are required to bring the Premises and the Common Areas serving the Premises, including, without limitation, the lobbies, corridors, drinking fountains, elevators, elevator vestibules, stairs, stair vestibules and restrooms, and signage in all such areas, into full compliance with all Laws including but not limited to Disabled Access Laws for use as B occupancy office space. All costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance (as hereafter defined).

Fire & Life Safety Panels. Landlord shall through General Contractor furnish and install all Fire & Life Safety panels, sub panels and improvements that are required to bring the Premises and the Common Areas serving the Premises, into full compliance with all Laws including but not limited to Fire & Life Safety Laws for use as B occupancy office space as shown on Exhibit \_\_\_\_\_ (Space Plan). All costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance (as hereafter defined).

Approvals of Use. Landlord shall pay for the Conditional Use Permit Fee, the Eastern Neighborhood Impact Fees for use as B occupancy office space as shown on Exhibit \_\_\_\_\_ (Space Plan), and the Change of Use Permit Fee. Subject to the cap below, all costs of such fees shall be at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance (as hereafter defined).

Ground Floor Infill Improvements. Landlord shall through General Contractor furnish and install all improvements that are required to infill the crosshatched area in the loading dock area at the rear of the Building as shown on the Ground floor plans on Exhibit \_\_\_\_\_ (Space Plan), including, without limitation, construction, seismic engineering, stairs, and walls for use as B occupancy office space. Subject to the cap below, all costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance (as hereafter defined).

Landlord's costs for the Approvals of Use and Ground Floor Infill Improvements shall be limited to Two Hundred Thousand Dollars (\$200,000.00) (the "Cap") and any and all such costs in excess of of the Cap shall be deducted from the Allowance (as hereafter defined).

(i) **Payment for Other Leasehold Improvement Work; Allowance**

Subject to Landlord's obligations in subparagraph 6.1(h) above, Landlord shall pay for the cost of constructing and installing the Leasehold Improvements (as defined below) up to a total sum of Sixty Five Dollars (\$55.00) per rentable square foot in the Premises (the "Allowance"). To the extent that any portion of the Allowance is not used by City such portion shall be credited against Base Rent next due or payable under the Lease, or, at City's option, refunded to City. In the event that the actual costs to construct and install the Leasehold Improvement Work incurred by Landlord exceed the amount of the Allowance, City shall pay such excess costs upon receipt of required documentation in accordance with subparagraph \_\_\_\_\_ below. No costs shall be included in the Allowance, and City shall not be obligated to pay any costs in excess of the Allowance, unless and until it approves the Construction Budget and any revisions thereto. City's share of the Leasehold Improvement costs (including City's share of the ROM and the Construction Budget as modified from time to time) in excess of the Allowance hereunder shall in no event exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) and to the extent it appears that there may be an excess cost, City shall revise the Leasehold Improvement Work to eliminate such excess cost. City shall not be responsible for, and the Allowance shall exclude, any supervision or management fee by Landlord, but either the Allowance shall include or the City shall be responsible for a third party project manager fee for a project manager retained by Landlord.

Landlord shall apply the Allowance to the City preapproved reasonable and actual costs of constructing the Leasehold Improvements incurred by Landlord until the Allowance is exhausted. Throughout the course of construction, City shall make monthly payments to Landlord based on a payment schedule to be agreed to concurrent with the approval of the initial ROM Construction Budget and attached as Exhibit L. Such payment schedule shall be designed to permit timely payments to the Architect and General Contractor of the costs of constructing the Leasehold Improvement based on the approved Construction Budget and construction schedule, in conformance with the payment obligations under Landlord's contracts with the Architect and General Contractor and subject to adjustments resulting from any Change Orders. City's payments of the cost of constructing the Leasehold Improvements in excess of the Allowance shall be due as Additional Charges and payment shall be made monthly together with payment of Base Rent hereunder.

(j) **Required Documentation of Costs**

Landlord shall provide City with copies of a final cost reconciliation including (i) all invoices received by Landlord from the Architect and the General Contractor in connection with the preparation of the Construction Plans or the Change Order or performance of the Leasehold Improvement Work, (ii) satisfactory evidence of payment by Landlord of such invoices, and (iii) upon City's request, such documentation as the Architect or the General Contractor may have provided to Landlord pursuant to its contract for the Leasehold Improvement Work. If the costs set forth in such final reconciliation exceed the amounts paid to Landlord pursuant to Section 6.1(i), City shall reimburse Landlord for such additional cost within thirty (30) days following the final reconciliation. If the costs in the final reconciliation show that the amounts paid by the City under Section 6.1(i) exceed the amounts reimbursable by City for the Leasehold Improvements, then Landlord shall pay such excess amount to the City within thirty (30) days following the final reconciliation. The City and Landlord agree to meet and confer in good faith as and when requested by either party to ensure that City's payment schedule meets the cash flow requirements of the Leasehold Improvement Work, and to review budgets, invoices and progress payments throughout the construction period.

(k) **No Waiver of Conditions.** Each waiver by City of a condition of payment must be expressly made by City in writing. If City makes a payment before fulfillment of one or more required conditions, that payment alone shall not be a waiver of such conditions, and City reserves the right to require their fulfillment before making any subsequent payments. If all conditions are not satisfied, City, acting in its reasonable judgment, may make payment as to certain items or categories of costs and not others.

(l) **City's Cure Right.** If Landlord does not make timely payment to General Contractor or any of its subcontractors or material suppliers, City may, but shall not be obligated to, advance City's funds directly to General Contractor or its subcontractors or material suppliers to pay the cost of the Leasehold Improvements, and any such advance shall be payable to City immediately upon demand, with interest at a rate of the lesser of twelve percent (12%) per annum or the maximum rate permitted by law.

(m) **Restoration of the Premises**

City shall not be required to remove these Leasehold Improvements upon the expiration or sooner termination of this Lease except those improvements specifically identified on the Approved Space Plans to be removed on the expiration or sooner termination of this Lease.

(n) **No Painting of the Interior Concrete Wall** The interior concrete walls shall at no time during the term be painted, coated, defaced or in any many colored as part of the Leasehold Improvement Work.

## **6.2 Installation of Telecommunications and Other Equipment**

Landlord and City acknowledge that the Leasehold Improvement Work shall be completed by Landlord exclusive of the installation of telecommunications, data and computer cabling facilities and equipment. City shall be responsible for installing such facilities and equipment, provided that Landlord shall furnish access to City and its consultants and contractors to the main telephone service serving the floor(s) on which the Premises are located and all other parts of the Building for which access is needed for proper installation of all such facilities and equipment including, but not limited to, wiring. City shall have the right to enter the Premises and such other portions of the Building at reasonable times during the course of construction of the Leasehold Improvements in order to install such facilities and equipment. City and Landlord shall use their good faith efforts to coordinate any such activities to allow the Leasehold Improvements and the installation of such facilities and equipment to be completed in a timely and cost-effective manner.

## **6.3 Construction of Improvements that Disturb or Remove Exterior Paint**

Landlord, on behalf of itself and its successors, assigns and agents, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord and its Agents shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 34 of the San Francisco Building Code does not constitute notification to City as Tenant under this Lease and similarly that notice under this Lease does not constitute notice under

Chapter 34 of the San Francisco Building Code. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and heat guns operating above 1,100 degrees Fahrenheit. Landlord covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Under this Section, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 34 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

#### **6.4 Landlord's Obligation to Construct Improvements During Extension Term(s)**

At the start of each Extension Term, Landlord, through its general contractor shall construct additional Leasehold Improvements, as requested in writing by City, up to an Extension Leasehold Improvement Allowance calculated as follows:

The Extension Leasehold Improvement Allowance for each of the Extension Terms shall be \$6.50 per square foot of Rentable Area of the Premises, as adjusted below.

The Index which is published for the October 2017 (the "Base Index for Extension Term") shall be compared with the Index published for the October most immediately preceding the commencement date of the applicable Extended Term (the "Adjustment Index for Extension Term"). As used herein the term "Index" shall mean the Consumer Price Index for All Urban Consumers (San Francisco/Oakland/San Jose Area; all items; 1982-84 equals 100) which is published by the United States Department of Labor, Bureau of Statistics.

If the Adjustment Index for the applicable Extension Term has increased over the Base Index for that Extension Term, then the amount of the Extension Leasehold Improvement Allowance shall be increased by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Base Index, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

Upon receipt of City's written desired improvements to be constructed from the Leasehold Improvement Allowance, Landlord shall diligently pursue the construction of City's desired improvements, provided that Landlord's obligation to pay for such improvements shall not to exceed the Extension Leasehold Improvement Allowance (unless City agrees in writing to pay the amounts above the Extension Leasehold Improvement Allowance as provided below. Landlord, prior to commencing such improvements, shall submit to City a written good faith estimate setting forth the anticipated cost of the desired improvements including but not limited to labor and materials, contractor's, permit fees and all soft costs. Within ten (10) business days thereafter, City shall either notify Landlord in writing of its approval of the cost estimate and

improvements, or specify any objections or desired changes to the proposed improvements. If City notifies Landlord of such objections and desired changes, City shall work with Landlord to reach a mutually acceptable alternative cost estimate. Following approval of the cost estimate and the proposed improvements, Landlord shall enter into a contract for the work with a guaranteed maximum price that does not exceed the maximum cost approved by the City. If the Landlord is not able to enter into such contract, the parties shall meet and confer to reduce the scope of work so that the guaranteed maximum price does not exceed the cost amount approved by the City. If guaranteed maximum price approved by the City exceeds the Extension Leasehold Improvement Allowance (such amounts exceeding the Extension Leasehold Improvement Allowance being herein referred to as the "Excess Costs"), then City shall pay to Landlord such Excess Costs, within thirty (30) days following Landlord's proper invoicing and completion of the work, whichever occurs later. The amounts payable by City for Excess Costs constitute Additional Charges payable pursuant to the Lease.

At City's option, and upon prior written notice to Landlord delivered no later than the first anniversary of the commencement date for the applicable Extended Term (the "Outside Request Date"), City may use all or a part of the then unused Extension Leasehold Improvement Allowance to abate rent. Landlord, thirty (30) days prior to the Outside Request Date, shall send City a written notice detailing the amount of the unused Extension Leasehold Improvement Allowance remaining, if any. If City does not thereafter submit a request for application of the entire remaining Extension Leasehold Improvement Allowance to Landlord for desired improvements or abatement of rent by the applicable Outside Request Date, then any unused amount shall accrue to the sole benefit of Landlord and City shall not thereafter be entitled to any credit, abatement or other concession based on the unused Extension Leasehold Improvement Allowance.

## **7. ALTERATIONS**

### **7.1 Alterations by City**

City shall not make or permit any alterations, installations, additions or improvements (collectively, "**Alterations**") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems or structural integrity of the Building, and the repainting and recarpeting of the Premises shall not constitute Alterations requiring Landlord's consent, but shall require adequate prior written notice to Landlord for Landlord to record and post a notice of nonresponsibility. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined below). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date. The interior concrete walls shall at no time during the term be painted, coated or in any many colored as part of any Alterations.

### **7.2 Title to Improvements**

Except for City's Personal Property (as defined in the next Section) all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto.

### **7.3 City's Personal Property**

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises within thirty (30) days after the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term.

### **7.4 Alteration by Landlord**

Landlord shall use commercially reasonable to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions or improvements to the Building. Landlord shall promptly remedy any such interference or disruption upon receiving City's notice thereof.

## **8. REPAIRS AND MAINTENANCE**

### **8.1 Landlord's Repairs**

Landlord shall repair and maintain, at its sole cost, not as an Operating Expense or subject to City reimbursement, and in first-class condition, the structural portions of the Building, including, without limitation, the foundation, bearing and exterior walls, plumbing, gas and electrical stubs to appropriate distribution panels within the Building and subflooring.

Landlord shall repair and maintain, subject to City reimbursement of Landlord's actual and reasonable costs as an Operating Cost, in first-class condition, the heating, ventilating, air conditioning, interior plumbing, electrical, fire protection, life safety, security and other mechanical, electrical systems of the Building (collectively, the "Building Systems") and the Common Areas. Any roof repair or replacement, exterior repainting of the Building and graffiti removal shall be Operating Costs, provided, however, Landlord shall have no obligation to repaint the exterior of the Building unless Landlord reasonable determines such repainting is necessary. Without limiting the foregoing, as part of Operating Costs, Landlord shall maintain the Building in a clean, safe and attractive manner, shall provide immediate exterior graffiti removal upon notice from City.

### **8.2 City's Repairs**

Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvements, and Landlord's repair and maintenance obligations hereunder, City



shall repair and maintain at its cost the interior portions of the Premises and any communications systems and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall make any such required repairs and replacements that Landlord specifies in writing (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (v) in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term of this Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those portions of the Building which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

### **8.3 Liens**

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

## **9. UTILITIES AND SERVICES**

### **9.1 Landlord's Provision of All Utilities to the Building**

Landlord shall furnish utilities and services stubbed into the Building in amounts required for City's comfortable use and occupancy of the Building including but not limited to (a) electric current in amounts required for normal lighting and for the operation of personal computers and other normal office machines and equipment, on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("Daily Basis"); (b) elevator service on a Daily Basis; (c) water for lavatory, kitchen and drinking purposes on a Daily Basis and (d) all fire & life safety connections on a Daily Basis. Without limiting Landlord's obligations hereunder, Landlord shall furnish all utilities and services required under this Lease in a manner consistent with such utilities and services normally provided in other first class buildings similar to the Building in the San Francisco Civic Center and SOMA Districts.

### **9.2 Payment for Utilities**

City, at City's sole cost, shall pay directly to the appropriate utility provider the cost of electric power, telephone, data, internet, and cabling (if any) for the Building Systems, the Building and the Premises. At City's option, City may require Landlord to include natural gas, if required, water, and sewer as Operating Costs or may contract for such services directly.

### **9.3 Janitorial, Refuse Removal, Security, Elevator Maintenance, HVAC Maintenance, Pest Control Services**

At City's option, City may contract for janitorial, refuse removal, security, elevator maintenance, HVAC maintenance, and pest control services directly or may request that Landlord, perform such lease-related services and include the actual cost of such services as an Operating Cost, as requested by City in writing and approved by the Director of Property. City shall reimburse Landlord for such expenses as they are incurred, at rates agreed-upon in advance until such time as such services can be added to and paid as a monthly Operating Cost.

## **9.4 Additional Services**

City reserves the right to request that Landlord, at City's cost, perform lease-related services or incur additional expenses not covered under this Lease that City may require from time to time, as reasonably requested by City in writing and approved by the Director of Property. City shall reimburse Landlord for such expenses as they are incurred, at rates agreed-upon in advance.

## **9.5 Disruption in Essential Utilities**

In the event of any failure, stoppage or interruption of any utilities to be furnished by Landlord hereunder, Landlord shall immediately notify City of such failure, stoppage or interruption, diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. In the event Landlord is unable to supply any of the Building's sanitary, electrical, gas and water (collectively, "Essential Services") and such inability of Landlord impairs City's ability to carry on its business in the Premises for a period of one (1) or more business days if such failure is in the reasonable control of Landlord or a period of five (5) or more consecutive business days if such failure is not within the reasonable control of Landlord, then the Rent shall be abated based on the extent such inability of Landlord impairs City's ability to carry on its business in the Premises, or, alternatively at City's election, City shall have the option to provide such services and offset the reasonable cost thereof against the Rent next due under this Lease. Such abatement, or right to provide the services and offset against Rent, shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs City's ability to carry on its business in the Premises. Landlord shall use its best efforts to restore disrupted Essential Services as soon as possible. However, if such failure to provide any Essential Services continues for any reason for thirty (30) days and such failure materially interferes with City's ability to carry on its business in the Premises, then City may, as its sole legal and equitable remedy under this Lease, terminate this Lease upon written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the Essential Services will be restored within sixty (60) days of the date City's use was interrupted, and the Essential Services are actually restored within such 60-day period. City shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City is due solely to the acts, omissions or negligence of City and/or its Agents.

## **10. COMPLIANCE WITH LAWS; PREMISES CONDITION**

### **10.1 Premises Condition and Landlord's Compliance with Laws; Indemnity**

Landlord represents and warrants to City, and covenants with City, as follows to the best of Landlord's knowledge that following Substantial Completion of the Leasehold Improvements: (a) the physical structure, fixtures and permanent improvements of the Premises (including, without limitation, the Leasehold Improvements) and all portions of the Property and the Building along the path of travel to the Premises (including, but not limited to, the Building entrances, Common Areas, restrooms, elevators, lobbies, and drinking fountains are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabilities Laws"); (b) the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, "Seismic Safety Laws"); (c) the Building, the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable federal, state, local and administrative laws, rules, regulations,

orders and requirements relating to fire and life safety (including, without limitation, the San Francisco High-Rise Sprinkler Ordinance) (collectively, "Life Safety Laws"); **(d)** the Building, the Common Areas and Building Systems serving the Premises are now, and as of the date of Substantial Completion of the Leasehold Improvements will be, in compliance with all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and **(e)** there are not now, and as of the date of Substantial Completion of the Leasehold Improvements will not be, any material physical or mechanical defects in the Premises, Building or the Building Systems that would materially adversely affect City's intended use of the Premises. As part of Operating Costs, Landlord shall at all times during the Term maintain the Property, Building, Common Areas and the Building Systems serving the Premises in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "Laws"), including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws. Without limiting Section 16.2 (Landlord's Indemnity), Landlord shall Indemnify City against any and all Claims arising out of any failure of the Property, Building, Common Areas, Building Systems, or any portion thereof, to comply with applicable Laws, provided City has given Landlord notice of any violation of applicable Laws of which the City, as the tenant, is or should be aware, as provided in this Section or any misrepresentation by Landlord under this Section.

### **10.2 City's Compliance with Laws; Indemnity**

City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 hereof and such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 above. Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

### **10.3 City's Compliance with Insurance Requirements**

City shall not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, **(b)** result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(c)** cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or **(d)** subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

## **11. SUBORDINATION**

**(a)** Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): **(a)** any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be

executed affecting Landlord's interest in the Property, or any portion thereof, and **(b)** the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have City's interest in this Lease be superior to any such instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement with City substantially in the form attached as Exhibit G and otherwise on terms reasonably acceptable to City evidencing such subordination or superiority of this Lease.

**(b)** In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. City's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

**(c)** Landlord confirms that, as of the date of execution of this Lease, there will be no existing loan encumbering the Property with a mortgage or deed of trust.

## **12. DAMAGE AND DESTRUCTION**

If the Premises, the Building or any Building Systems are damaged by fire, explosion or other casualty, Landlord shall repair the same without delay (and if Landlord is then carrying insurance on the Leasehold Improvements or if City at its sole option makes funds available to Landlord, Landlord shall also repair the Leasehold Improvements), provided that such repairs can be made under applicable laws within one hundred twenty (120) days after Landlord obtains all necessary permits for such repairs but not later than two hundred seventy five (275) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which

such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and such damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Tenant shall be responsible), Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or City may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair such damage.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## **13. EMINENT DOMAIN**

### **13.1 Definitions**

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

### **13.2 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

### **13.3 Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

### **13.4 Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises, (ii) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (iii) City elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

### **13.5 Termination of Lease; Rent and Award**

Upon termination of this Lease in its entirety pursuant to Section 13.3, or pursuant to an election under Section 13.4 above, then: (a) City's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, (b) Landlord shall be entitled to the entire Award in connection therewith, and (c) City shall receive any Award that does not otherwise reduce the Award to Landlord and/or Landlord's lender (if there is a lender at the time of the Award) made specifically for City's relocation expenses, damage to City's Personal Property, and the interruption of or damage to City's business.

### **13.6 Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall

be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

## **14. ASSIGNMENT AND SUBLETTING**

Except as provided in this Section below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed.

In the event that City sublets, assigns or transfers this Lease to a third party, City shall pay to Landlord as additional rent an amount equal to fifty percent (50%) of any Increased Rent (as defined below) when and as such Increased Rent is received by City, after City has first recovered the following costs of entering into each particular sublease or assignment (with no requirement to amortize such costs): (i) the cost of tenant improvements made in connection with the particular transaction and any tenant improvement allowance paid by City in connection with the particular transaction, (ii) brokerage commissions, if any, (iii) advertising costs, and (iv) attorneys' fees (including the fees of deputy City attorneys calculated at the then applicable rate charged to City departments for such legal services. As used in this Section, "Increased Rent" shall mean the excess of (i) all rent and other consideration which City is entitled to receive by reason of any sublease, assignment or other transfer of this Lease, over (ii) the rent and expenses otherwise payable by City under this Lease at such time. Any assignment, sublet or other transfer by City of this Lease, shall be conditioned upon City remaining primarily liable to Landlord for all of the obligations of Tenant under the Lease.

The above notwithstanding, City shall have the right, upon notice to but without the consent of Landlord, to use and occupy any or all the Premises to any department, commission or agency, nonprofit, vendor or service provider of the of the City and County of San Francisco for uses permitted under this Lease and such use of any or all of the Premises shall not, in any way, be considered a sublet, assignment or transfer.

## **15. DEFAULT; REMEDIES**

### **15.1 Events of Default by City**

Any of the following shall constitute an event of default by City hereunder:

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City or any Adjustment Date, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

## 15.2 Landlord's Remedies

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

(c) No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing by agreement, applicable law or in equity. In addition to other remedies provided in this Lease, Landlord shall be entitled all California statutory rights available to landlords, including, without limitation, those related to forcible detainer and unlawful detainer, and, to the extent permitted by applicable law, to injunctive relief, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Landlord at law or in equity. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default.

## 15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, cure such default at Landlord's expense if such default continues after thirty (30) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such thirty (30)-day period, such thirty (30)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for ninety (90) days and materially impairs City's ability to carry on its business in the Premises, then City shall have the right, as City's sole legal or equitable remedy, to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such ninety (90)-day period. City's rights hereunder and under Section 3.3 (Delay in Delivery of Possession), Section 5.3 (Interference with Access), and Section 9.4 (Disruption in Essential Services), shall not limit in any way any of its other rights and remedies hereunder or at law or in equity to the extent allowed under Sections 3.3, 5.3 and 9.4.



## **16. INDEMNITIES**

### **16.1 City's Indemnity**

City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), incurred as a result of (a) City's use of the Premises, including without limitation, the roof, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

### **16.2 Landlord's Indemnity**

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

## **17. INSURANCE**

### **17.1 City's Self-Insurance**

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, the Leasehold Improvements and any Alteration, except for damage caused by gross negligence or willful misconduct of Landlord or its Agents.

### **17.2 Landlord's Insurance**

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to, reduction of coverage or otherwise subject to modification except after thirty (30) days prior written notice to City. Landlord hereby waives

any rights against City for loss or damage to the Premises or any other part of the Property, to the extent covered by Landlord's property insurance.

In addition, Landlord, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: **(a)** Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations; and **(b)** and only if Landlord has employees, Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required to be maintained by Landlord hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Landlord.

### **17.3 Waiver of Subrogation**

Landlord and city hereby waive and release, and shall cause their respective insurance carriers (or self insurance by City) to waive and release, any and all rights of recovery, claims, actions or causes of action against the other for any loss or damage with respect to City's personal property, City's Alterations, the Leasehold Improvements, the Building, the Premises, or any contents thereof, including rights, claims, actions and causes of action based on negligence, which loss or damage is (or would have been, had the insurance required by this Lease been carried) covered by insurance. The parties agree that the foregoing waiver shall be binding upon their respective property and business income insurance carriers, and (except for any insurance policy that provides that the insured thereunder may effectively waive subrogation without further action on the part of the insured) each party shall obtain endorsements or take such other action as may be required to effect such insurer's waiver of subrogation under each such policy.

### **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of **(a)** inspecting the Premises, **(b)** supplying any service to be provided by Landlord hereunder, **(c)** showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, **(d)** posting notices of non-responsibility, and **(e)** altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be unreasonably interfered with.

### **19. ESTOPPEL CERTIFICATES**

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: **(a)** the Commencement Date and Expiration Date of this Lease, **(b)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), **(c)** that there are no defaults under this Lease (or if so, specifying the same), and **(d)** the date to which Rent has been paid.

## 20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Prior to the Expiration Date, City shall remove from the Premises all of City's Personal Property and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by City), above. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Notwithstanding anything to the contrary in this Lease, City shall not be required to demolish or remove from the Premises any of the Leasehold Improvements. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## 21. HAZARDOUS MATERIALS

### 21.1 Definitions

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Section 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

### 21.2 Landlord's Representations and Covenants

Landlord represents and warrants to City that, to Landlord's actual knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises or the common areas of the Building contain any lead-based paints, though Landlord hereby discloses that undercoats of paint on the exterior of the Building may consist of lead-based paints; (e) there has not been and is currently no Release of any Hazardous Material in the Building or in, on, under or about the Property; and (f) the Property is not subject to any claim by

any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for their intended purposes.

### **21.3 Landlord's Environmental Indemnity**

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims related to remediation of the violation of Environmental Laws arising during or after the Term of this Lease **(a)** as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or **(b)** in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Property, unless City or its Agents caused such Release.

### **21.4 City's Covenants**

Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws, provided that City may use such substances in such limited amounts as are customarily used in offices so long as such use is in compliance with all applicable Environmental Laws.

### **21.5 City's Environmental Indemnity**

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents or any third Party (not including Landlord or Landlord's Agents) cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy.

## **22. SPECIAL PROVISIONS**

### **22.1 First Offer to Purchase**

In the event Landlord decides to sell the Property during the Term of the Lease to a third party (and not to any member of Landlord's family by blood or marriage), Landlord shall first offer the Property to City at the purchase price that the Property will be offered to the real estate market. Such purchase price shall be contained in a written notice ("Sale Notification") from Landlord to City and shall be subject to adjustment as provided below. City shall have thirty (30) days from the Sale Notification date to submit (i) an acceptance of the purchase at the price contained in the notice or (ii) a counter offer at a lesser price and/or otherwise upon the other business terms contained therein which Landlord has agreed to within such thirty (30) days.

City's offer to purchase shall be subject to the approval of City's Board of Supervisors and Mayor in compliance with all Laws within sixty (60) days of execution of a Purchase and Sale Agreement, incorporating the terms herein and other reasonable and customary terms and, at City's option, City's successful issuance of a debt type instrument to fund the purchase.

Within (3) days of an agreement on the purchase price, Landlord shall deliver copies of all reports, appraisals and other documents in Landlord's possession regarding the Property, not previously delivered to City. Landlord shall cooperate with City in its due diligence investigation.

If requested by Landlord, City, at no additional cost or liability to City, shall cooperate with Landlord in effectuating an IRS 1031 Exchange.

Close of escrow shall occur on or before thirty (30) days from the date of City's notice of the approval by City's Board of Supervisors and Mayor of the purchase. At Landlord's option, Landlord shall have three (3) options to extend the closing date by up to one hundred eighty (180) days (each). Landlord shall exercise each such option to extend the closing date by providing City with thirty (30) days advance written notice.

At closing, City shall pay for the cost of the premium of the extended coverage title insurance policy, one half of the escrow fees, and one half of other typical closing expenses. Landlord shall pay the transfer taxes, one half the escrow fees and one half the other typical closing expenses such as notary fees and overnight express charges. Landlord shall deliver the following (among other customary items) through a mutually agreeable escrow company:

- (i) a grant deed conveying ALTA insurable title in the Property subject only to taxes not yet due and payable, and other exceptions acceptable to City,
- (ii) a bill of sale for all personal property on the Property, and
- (iii) a written disclosure of all known facts (including any and all property inspection reports) which would affect the marketability or City's intended use of the Property.

If City does not elect to pursue its right to purchase the Property at the purchase price set forth in the Sale Notification or does not make any counter offer within the thirty (30) day period, then City's right of first offer shall terminate and Landlord shall be free to sell the Property to any person whomever and upon any terms whatsoever without any obligation to City.

If, however, City does not accept the purchase price set forth in the Sale Notification but makes an all- cash- on – closing counter offer (the "City's Counter Offer") within the thirty (30) day period that is not accepted by Landlord, then Landlord may sell the Property, free of any claim of City, to any potential buyer who is willing to pay a gross purchase price (an amount determined without regard to any brokerage commission liability, but reduced by any Landlord credits or other give backs to the potential buyer for such items as existing building conditions or improvements, hereinafter to referred to as "Gross Purchase Price") exceeding the amount of City's Counter Offer.

In the event Landlord is unable to sell the Property for more than City's Counter Offer, and still wishes to sell Premises, Landlord shall give another Sale Notification if and when Landlord intends to sell the Property at a later date, and the process described in this Section 22.1 for City's right of first offer to purchase shall be repeated.

City's right of first offer to purchase shall terminate and be of no further effect if a sale of the Property to an arm's length third party is consummated in accordance with the foregoing provisions.

## **23. GENERAL PROVISIONS**

### **23.1 Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: **(a)** City at Tenant's address set forth in the Basic Lease Information; or **(b)** Landlord at Landlord's address set forth in the Basic Lease Information; or **(c)** such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

### **23.2 No Implied Waiver**

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

### **23.3 Amendments**

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 of this Lease, and **(e)** any other amendment or

modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of City's Board of Supervisors.

#### **23.4 Authority**

Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject.

#### **23.5 Parties and Their Agents; Approvals**

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

#### **23.6 Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

#### **23.7 Successors and Assigns**

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

#### **23.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or

finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **23.9 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law, except to the extent that enforcement of this Lease without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of this Lease.

### **23.10 Governing Law**

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

### **23.11 Entire Agreement**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

### **23.12 Attorneys' Fees**

In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.



### **23.13 Holding Over**

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be: one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease for the first thirty (30) days and one hundred fifty percent (150%) of the monthly Base Rent in effect during the last month of the Term of this Lease thereafter, and such tenancy shall otherwise be on the terms and conditions contained herein.

### **23.14 Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

### **23.15 Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

### **23.16 Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

### **23.17 Signs**

City may erect or post signs on or about the Premises subject to Landlord's prior written approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

### **23.18 Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity),

Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

### **23.19 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

### **23.20 Transfer of Landlord's Interest**

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

### **23.21 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

### **23.22 MacBride Principles - Northern Ireland**

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

### **23.23 Controller's Certification of Funds**

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other

payments required under this Lease are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination. Based upon the actual knowledge of Charles Dunn, Real Property Officer for the City, the City represents and warrants to Landlord that for the last twenty four and one half years (24 ½) prior to the date of execution of this Lease, the City, as a tenant, has not terminated another lease with any third party landlord based upon City's right to terminate as set forth in this Section 23.23.

### **23.24 Prevailing Wages for Construction Work**

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises, which Landlord provides under this Lease, shall be paid not less than the highest prevailing rate of wages consistent with the requirements of Section 6.22(E) of the San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco County. Landlord shall include, in any contract for construction of such Leasehold Improvements or other improvements to the Premises, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

### **23.25 Non Discrimination in City Contracts and Benefits Ordinance**

#### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Landlord agrees not to discriminate against any employee of, any City employee working with Landlord, or applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

#### **(b) Subcontracts**

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

#### **(c) Non-Discrimination in Benefits**

Landlord does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic

partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

#### **(d) CMD Form**

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). Landlord hereby represents that prior to execution of the Lease: **(a)** Landlord executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and **(b)** the CMD approved such form.

#### **(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

### **23.26 Tropical Hardwood and Virgin Redwood Ban**

**(a)** Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

**(b)** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

**(c)** In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

### **23.27 Bicycle Storage Facilities**

Article 1.5, Section 155.3, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle parking at City-leased buildings at no cost to Landlord. During the Term, City shall have the right to install and maintain, at its sole cost, all Class 1 Bicycle Parking Spaces (as defined in the Planning Code) and all Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations required under the Planning Code.

### **23.28 Resource-Efficient City Buildings and Pilot Projects**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction and operation of City buildings. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

### **23.29 Counterparts**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

### **23.30 Effective Date**

The date on which this Lease shall become effective (the "Effective Date") is the date upon which: (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt a resolution [or enact an ordinance] approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by the parties hereto.

### **23.31 Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

### **23.32 Conflicts of Interest**

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Landlord becomes aware of any such fact during the Term of this Lease, Landlord shall immediately notify City.

### **23.33 Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and

chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the name of each person, entity or committee described above.

### **23.34 Preservative-Treated Wood Containing Arsenic**

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

### **23.35 Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

### **23.36 Force Majeure**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, a "Force Majeure"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

### **23.37 Landlord Limitation of Liability**

The liability of Landlord to Tenant for any default by Landlord under this Lease shall be limited solely and exclusively to an amount which is equal to the Landlord's equity interest of Landlord in the Building and Property. Landlord shall have no personal liability to Tenant under this Lease or related to Tenant's use and occupancy of the Premises and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. Notwithstanding any contrary provision in this Lease, Landlord shall not be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring or other consequential, punitive or exemplary damages. To the extent that Landlord consists of one or

more persons or entities, there shall be no joint and several liability for any such individual person or entity.

### **23.38 Tenant Waiver**

Except for Landlord's or Landlord's Agent's gross negligence or willful misconduct, Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever (including, but not limited to, any personal injuries resulting from a slip and fall in, upon or about the Premises or Building) and agrees that Landlord and Landlord's Agents shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant.

### **23.39 Agent**

The term "Agent" shall mean an employee, independent contractor, member, director, officer, partner, shareholder, representative, manager, agent, invitee, licensee, subtenant, occupant, and the general public.

### **23.40 Landlord's Right To Cure**

All obligations to be performed by City under any of the terms of this Lease shall be at City's sole cost and expense. Without regard to whether or not such failure does or does not at such time constitute an event of default, if City (a) shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or (b) shall fail, for any reason other than unavoidable delays, to perform any other act on its part to be performed hereunder within the time frame for such performance required under the Lease, upon seven (7) days written notice thereof by Landlord (except in cases of emergency when Landlord may proceed to cure without prior notice to City) Landlord may, but shall not be obligated so to do, and without waiving or releasing city from any obligations of City, make any such payment or perform any such other act on City's part to be made or performed as in this Lease provided. All sums so paid by Landlord and all necessary incidental costs, including costs of settlements, defense, court costs and attorneys' fees which Landlord may incur in the course of any such cure, shall be payable to Landlord on demand, and Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of rent.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY

Landlord and City have executed this Lease as of the date first written above.

LANDLORD:

By: \_\_\_\_\_  
Michael E. Hornstein, as trustee for the  
Michael and Ellen Hornstein 1998 Revocable  
Trust (68% ownership)

By: \_\_\_\_\_  
Ellen F. Hornstein, as trustee for the Michael  
and Ellen Hornstein 1998 Revocable Trust  
(68% ownership)

By: \_\_\_\_\_  
Jordan D. Hornstein (16%) as an individual  
held as his sole and separate property

By: \_\_\_\_\_  
Emily F. Hornstein (16%) as an individual  
held as her sole and separate property

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

RECOMMENDED:

\_\_\_\_\_  
Assessor - Recorder

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney



**EXHIBIT A**

**FLOOR PLAN(S)**

CONSISTING OF \_\_\_\_\_ PAGE(S)

**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. John Updike  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

RE: Acknowledgement of Commencement Date, Lease Between \_\_\_\_\_  
(Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises  
known as \_\_\_\_\_ located at \_\_\_\_\_

Dear Mr. Updike:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as  
defined in Section 3.2 of the Lease) is \_\_\_\_\_, 20\_\_.

Please acknowledge your acceptance of this letter by signing and returning a copy of this  
letter.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
John Updike  
Director of Property

Dated: \_\_\_\_\_

**EXHIBIT C**

**Schedule of Annual Base Rent Adjustments**

<b><u>Lease</u></b> <b><u>Yr</u></b>	<b><u>Period</u></b>	<b><u>Monthly Base Rent</u></b>	<b><u>Annual Base Rent</u></b>
1		\$104,687.50	\$1,256,250.00
2		\$107,828.12	\$1,293,937.40
3		\$111,062.95	\$1,332,755.40
4		\$114,394.83	\$1,372,737.90
5		\$117,826.66	\$1,413,919.90
6		\$121,361.44	\$1,456,337.20
7		\$125,002.27	\$1,500,027.20
8		\$128,752.32	\$1,545,027.80
9		\$132,614.87	\$1,591,378.40
10		\$136,593.30	\$1,639,119.60
11		\$140,691.09	\$1,688,293.00
12		\$144,911.81	\$1,738,941.80

## **EXHIBIT D**

### **EXCLUSIONS FROM OPERATING COSTS**

- 1.** Costs of capital repairs, capital improvements and equipment, except for those Allowed Capital Costs as set forth in Section 4.7 of the Lease;
- 2.** Rentals and other related expenses for items (except when needed in connection with normal repairs and maintenance of permanent systems) which if purchased rather than rented, would constitute a capital improvement which is specifically excluded in item 1 above (excluding, however, equipment not affixed to the Building which is used in providing janitorial or similar services);
- 3.** Costs incurred by Landlord for the repair of damage to the Building, to the extent that Landlord is reimbursed by insurance proceeds (excluding any deductible not to exceed Ten Thousand Dollars (\$10,000) which shall be paid by Tenant);
- 4.** Depreciation, amortization and interest payments, except to the extent provided herein pursuant to items 1(i) and 1(ii) above and except on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, all as determined in accordance with generally accepted accounting principles, consistently applied (as applied to commercial real estate), and when depreciation or amortization is permitted or required, the item shall be amortized over its reasonably anticipated useful life (as reasonably determined by Landlord);
- 5.** Leasing commissions, attorneys' and other professionals' fees, space planning costs and all other costs and expenses in connection with negotiations with present or prospective tenants or any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building or the defense of Landlord's title to the Building or the real property on which it is located;
- 6.** Costs incurred by Landlord due to violation by Landlord of applicable laws, rules or regulations, the terms and conditions of any lease, ground lease, mortgage or deed of trust, or other covenants, conditions or restrictions encumbering the Building or the real property on which it is located;
- 7.** Overhead and profit increments paid to Landlord or to subsidiaries or affiliates of Landlord, for management, or other services, supplies or materials, to the extent the same exceed the costs of such goods and/or services rendered by unaffiliated third parties on a competitive, arms-length basis;
- 8.** Any ground lease rental or rental under any other underlying leases;
- 9.** Except as specifically permitted as an Allowed Capital Cost under Section 4.7, no costs for capital repairs, capital improvements or capital equipment, interest, principal, points and fees on debts or amortization on any mortgage, deed of trust or any other debt instrument encumbering any of the Building or the real property on which it is located;
- 10.** All items and services for which City separately reimburses Landlord

- 11.** Advertising or promotional expenditures, and the costs of acquiring and installing signs in or on any of the Building identifying the owner of the Building;;
- 12.** Tax penalties incurred as a result of Landlord's negligence, inability or unwillingness to make payments when due;
- 13.** Costs arising from the presence of Hazardous Material in or about the Building including, without limitation, groundwater or soil conditions, except if such Hazardous Material is brought onto the Building by City or during the Term of the Lease by any third party other than a Landlord Agent;
- 14.** Landlord's charitable or political contributions;
- 15.** To the extent the following costs arise during any applicable warranty periods, costs as a result of repairs of latent defects in the Building core and shell or improvements installed by Landlord or in the Building Systems, and any costs incurred by Landlord in the event any portion of the Building is made untenable by fire or other casualty required to be insured against pursuant to the terms of the Lease;
- 16.** Capital costs for sculpture, paintings or other objects of art;
- 17.** Costs (including, without limitation, all attorneys' fees and costs of settlement, judgments and payments in lieu thereof) arising from claims, disputes or potential disputes, including, without limitation, tax disputes (except where the tenant of the Building would receive benefits if Landlord prevails) in connection with potential or actual claims, litigation or arbitrations pertaining to Landlord or the Building;
- 18.** All direct cost of refinancing, selling, exchanging or otherwise transferring ownership of the Building or the real property on which it is located or any interest therein or portion thereof, including broker commissions, attorney's fees and closing costs;
- 19.** Reserves for bad debts, rent loss, capital items or further Operating Costs; and
- 20.** Landlord's general corporate overhead and general and administrative ex.

**EXHIBIT**

**Property Insurance**  
**(attach policy)**

**EXHIBIT E**

**Building Rules and Regulations**

1. No advertisement, picture or sign of any sort shall be displayed on or outside the Premises or the Building without the prior written consent of Landlord, which shall not be unreasonably withheld. Landlord shall have the right to remove any such unapproved item without notice and at City's sole expense.
2. City shall not use any method of heating or air conditioning other than that supplied by Landlord without the prior written consent of Landlord.
3. All window coverings installed by City and visible from the outside of the Building require the prior written approval of Landlord, which shall not be unreasonably withheld.
4. City shall not use, keep or permit to be used or kept any foul or noxious gas or substance or any flammable or combustible materials on or around the Premises or the Building.
5. City shall not alter any lock or install any new locks or bolts on any door at the Premises without providing a "key" to Landlord and for non-key high security areas without the prior consent of Landlord which shall not be unreasonably withheld.
6. City is responsible for the storage and removal of all trash and refuse. All such trash and refuse shall be contained in suitable receptacles stored inside the Premises, except as otherwise designated by Landlord.
7. Plumbing fixtures and appliances shall be used only for the purposes for which designed and no sweepings, rubbish, rags or other unsuitable material shall be thrown or placed in the fixtures or appliances. Damage resulting to fixtures or appliances by City, its agents, employees or invitees shall be paid for by City and Landlord shall not be responsible for the damage.
8. City shall not use, or permit any part of the Premises to be used for lodging, sleeping or for any illegal purpose.
9. Neither City nor its agents, employees, contractors, guests or invitees shall smoke or permit smoking anywhere within the Premises, Common Areas or any other part of the Building or Property.
10. Without the written consent of Landlord, which may be given or withheld in Landlord's sole discretion, no animals, except those assisting disabled persons, shall be brought into the Building or kept in or about the Premises.

**EXHIBIT F**



**EXHIBIT \_**

**Form of Subordination, Nondisturbance and Attornment Agreement**